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IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1991

ALBERT F. FAGONE,

PETITIONER,

V.

CHARLINE FAGONE,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the attempt by the Ohio divorce court to exercise jurisdiction "in rem" over jointly-held marital property and interests situated in Louisiana, resulting in the entry of a decision which deprived petitioner of his rightful one-half share in community property, inter alia, violate the petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment and Section 2, ART. IV, U.S. Constitution?

2. Did the entry of a final decree of divorce by the Ohio divorce court which incorporated a purported equitable distribution of marital interests in the Louisiana property, over which the court lacked jurisdiction "in rem", and the subsequent award of all of the Louisiana property and interests to the spouse,

violate petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment and Section 2, ART. IV, U.S. Constitution?

3. Does the entry of a judgment levying an indefinite jail term against a non-resident defendant in a civil contempt action initiated after the expiration of the Ohio limitations statutes, Ohio Revised Code Anno., O.R.C. §2305.11, where the divorce court lacked jurisdiction "in personam" and "in rem", and there was improper service and no appearance, violate the petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment and Section 2, ART. IV, U.S. Constitution?

4. Does the attempt to exercise jurisdiction "in rem" by an entry of an order by the Ohio trial court authorizing a judicial transfer of all the "interests

held and titled" by the petitioner in jointly-held Louisiana property be conveyed to the spouse violate the petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment and Section 2, ART. IV, U.S. Constitution?

5. Did pleadings submitted to the courts below by the petitioner alleging discriminatory and prejudicial treatment by the trial court and raising questions of deprivations of the petitioner's rights under both the federal and state constitutions by the entry of void judgments and jurisdictional defects, pose a substantial Constitutional question?

6. Are decisions and judgments declared to be void for lack of jurisdiction entitled to recognition in sister states either by comity or under Section 1, ART.IV, U.S. Constitution?

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TO THE

SUPREME COURT OF OHIO

The petitioner, Albert F. Fagone, respectfully prays that a writ of certiorari issue to review the opinion and judgment of the Supreme Court of Ohio entered in Case No. 90-1573 on 28 Nov. 1990, and the decisions and judgments of the courts below.

OPINIONS AND ORDERS BELOW

The decision issued by the Court of Appeals, Montgomery County, Ohio, on 13 June 1990 precluding Petitioner Fagone's appeal on the basis of "res judicata" and further finding that the appeal was "frivolous" has not been reported to the best of petitioner's knowledge.

A copy of same is submitted as Appendix 1a under separate cover.

The entry of the Supreme Court of Ohio, 28 Nov. 1990, denying petitioner's petition for a writ of certiorari has not been reported to the best of petitioner's knowledge.

A copy of same is submitted as Appendix 2a under separate cover.

The remaining decisions and orders of the courts below appear thereafter in the Appendix under separate cover.

JURISDICTION

The opinion of the Supreme Court of Ohio was issued on 28 Nov 1990. Petitioner was deprived from filing a motion for reconsideration through no fault of his own as described in this petition. Jurisdiction of this Honorable Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The decisions of the courts below are presumably based on the jurisdiction of the trial court to grant a dissolution of the parties' marriage and the entry of a decree of divorce. Notwithstanding these claims, and only so far as the divorce issue alone and by itself is concerned, petitioner claims all other

decisions and judgments rendered by the trial court purporting to be an equitable distribution of marital assets and community property involving foreign real estate situated in Louisiana and the profits and interests therefrom are null and void for lack of jurisdiction, authority, and power over the subject matter(s). Additionally, the decisions and judgments of the trial court are not. mandated by any statutes, laws, rules or precedence of Ohio or the several states and conflict with previously-held decisions of this Honorable Court and the several United States Courts of Appeal rulings in like cases involving foreign real estate and the Constitution. Petitioner also makes claims under the Constitutional provisions indicated in challenging the trial court's decisions and judgments for lack of jurisdiction, which read in pertinent part, as follows;

SECTION 1, ART. IV

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State".

SECTION 2, ART. IV

"The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States".

SECTION 1, AMEND. XIV, U.S.C.A.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

STATUTORY PROVISIONS

See, Table of Authorities

STATEMENT OF THE CASE

The original cause of action in this case, 83-DR-1965, was the initiation of a divorce action filed by the plaintiff in the Domestic Relations Court, Montgomery County, Dayton, Ohio, on 25 October 1983 approx. fifteen (15) years after the parties alleged separation in 1968.

Petitioner is a resident of Maine and a non-resident of Ohio since 1968.

Plaintiff's complaint did not contain demands for alimony, child support, arrearages, or any other demands requesting only an equitable distribution of marital interests which did not specifically describe or identify the location of said interests. APPENDIX "28a".

A motion to dismiss the action was filed by petitioner's counsel (who was

unknown to the petitioner having been retained by a telephone call to Ohio) on 20 Dec. 1983 claiming improper service and the lack of the trial court's jurisdiction over the Louisiana property. APPENDIX "29".

On 22 Dec. 1983, the trial court entered a judgment overruling the motion to dismiss for "failure to state good grounds". Appendix-"12a".

Subject matter of the equitable distribution consideration was jointly-held marital property and interests directly related to it which consisted of approx. one-hundred and five (105) acres of immovable real estate, land only, situated in Louisiana which had been purchased in 1956 by the parties while residing in Maine and after their marriage in April 1955. Absolute title to the Louisiana property was acquired in 1959, the property classified as

community property.

After the plaintiff postponed the initial hearing date without notice, a second date was set for Monday, 2 July 1984.

Shortly after the commencement of proceedings on 2 July, petitioner was informed that the trial court refused to accept his exhibits presented on the preceding Friday, 29 June 1984, three (3) days prior, stating the reason as "too late". The number of exhibits introduced by plaintiff initially numbered approx. 95 and by the date of the hearing was reduced to sixty-five (65) as evidenced by the transcript of proceedings.

Shortly thereafter, petitioner was informed by counsel that the trial court would not let him file a countersuit which petitioner had been led to believe that this action had been taken before-

hand and a part of the proceedings. It was later discovered that petitioner's counsel, allegedly "in concert" with plaintiff's counsel and the trial court, had engaged in collusion for his own benefit, and to the detriment of his client.

At the time of the hearing, the appraised value of the Louisiana property, not including profits or other interests, was estimated to be approx. seventy-eight thousand, seven hundred and fifty ($78,750). At the court's direction, the appraisal also indicated the value of the property in 1968 which was estimated at twenty-one thousand ($21,000,00) dollars. Appendix "48a".

During the hearing, a morning and afternoon session lasting approx. four (4) hours, with only a few minutes at the beginning devoted to the dissolution question, the trial court proceeded

to direct the orchestration of the hearing to fit the intended and prejudged results by interrupting the proceedings sixty-one (61) times, not including casual statements, coaching plaintiff's counsel five (5) times, and three (3) off-record discussions, two (2) of them held in judge's chambers. One (1) other meeting held in judge's chambers prior to the start of the hearing was not recorded in the transcript which is approx. one-hundred (100) pages long. Additionally, as also evidenced by the transcript, plaintiff's exhibits are shown to number sixty-five (65), while the petitioner was deprived of introducing his. Appendix "33a".

During the entire time of direct examination of the petitioner, the judge was engaged in a non-stop writing exercise showing no apparent interest or concern of what was being

said.

In addition to the attempt by the trial court during the hearing to determine, establish, fix, and act directly on title, deed, and ownership of the Louisiana property which is evident in the decision of the trial court entered on 11 July 1984, the predisposition of the court to deprive the petitioner of his rightful share of the property and interests is reflected by it's selection of the 1968 appraisal value on which to base it's findings, effectively depriving the petitioner of his rights and full value of marital assets as of 1984 not 1968. As a result of the trial court's decision, whose citations, reasons, calculations, and attempts to act on title and ownership to foreign real estate were irrelevant and inapplicable, petitioner's "interests" were devoid of appreciation, other interests, and

profits received and concealed by the plaintiff from the leasing of the property which was considerable, therefore petitioner has a substantial interest in the outcome of this case. Appendix "33a".Transcript, pp. 4, 64, 101.

In an oral and written agreement reached in 1955 between the parties and signed which outlined the contributions required of each in order to purchase the property, a post-nuptial agreement which was disregarded by the trial court and practically denied by the plaintiff (Appendix "33a". p. 49- Transcript), the equal division of property had already been established. Appendix "33a". p. 49 - Transcript.

The calculations of the trial court are inconceivable and more than unreasonable. By taking seventy-five per cent (75%) of the value of the marital property without profits and interests

first, and then using that total to make a purported "equitable" distribution less other unjustifiable deductions, leaves the petitioner with approx, one and three quarters (1.75%) per cent of the marital assets based on a minimum estimated value of two-hundred thousand ($200,000) dollars.

One-hundred (100%) per cent of the value of the marital assets were awarded to the plaintiff in 1984 at their 1984 value, not 1968.

Between June 1968, the time of the parties alleged separation and 2 July 1984, plaintiff never filed any court action or requested alimony, child support, formal separation agreement or any other demand and none was indicated in the complaint for divorce. Likewise, petitioner did not know of or agree to any stipulations, was not told of any entered into by counsel, and gave no one

authority to enter into any stipulations on his behalf.

Containing the afore-mentioned topics, the trial court's perspectives and interpretations of an "equitable" distribution of marital property, a decision was entered on 11 July. Appendix "15a".

On 23 July, the trial court entered a final decree of divorce which purportedly incorporated an "equitable" distribution directing the petitioner to execute a quit-claim deed within fifteen (15) days transferring his interests in the Louisiana property to the plaintiff. Petitioner had returned to Maine on 4 July and allowed the time to expire which would have been 8 August 1984. Appendix "16a".

Thirteen (13) months later, plaintiff initiated a civil contempt action after the expiration of the Ohio

limitations statutes. On 28 Oct. 1985, the trial court entered a judgment titled, " Decision and Judgment"(hereinafter referred to as the "contempt" judgment") levying a jail sentence against the petitioner and also containing a judgment "in rem" for conveyance of the Louisiana property by directing that a judicial transfer be prepared. Appendix "20a".

The Ohio Rules of Court, Civ.R. # 70 does not provide the power, authority or jurisdiction to the courts of Ohio to order a judicial conveyance of property situated outside the State. Appendix "55a".

The purpose of the jail sentence and it's effect, which was to deprive petitioner's freedom to travel and also of his rights to return to Ohio to visit close friends, and ingress or egress the State of Ohio at leisure without fear of

incarceration. Sec. 2, ART. IV, U.S. Constitution; 27 L.Ed. 2d 862,(866,867). Appendix "57a".

The advice of a former counsel was to stay out of Ohio. Appendix "50a".

Added to the "contempt judgment", which petitioner alleges attempted to circumvent Ohio statutes, laws, and rules, the trial court in a "void process" to alter the provisions of the final decree of divorce and conceal a judgment "in rem" involving foreign real estate, over which they lacked jurisdiction, and without the power, and authority to render in a judgment "in personam".

As a justification, the trial court used the "contempt judgment" to enter a transfer of real estate titled, "Order of Judicial Transfer of Real Estate" dtd. 27 Nov. 1985 (hereinafter referred to as the "transfer judgment")

ordering the transfer of foreign real estate and interests in the Louisiana property to the plaintiff. Appendix "21a".

The final decree of divorce contained no provisions by the order of the trial court invoking continuing jurisdiction, made no allowance for alternatives, did not state that the decree would act as a conveyance in the event the husband failed to execute a quit-claim deed, and did not have the authority for appointing someone to act as petitioner's agent. Appendix "16a".

At the time of the entry of the "transfer judgment", petitioner was not represented by counsel, had fired counsel of record in July 1984, and no longer retained counsel of record in 1985 prior to the initiation of the contempt action. A copy of the "transfer judgment" was never sent to the

petitioner after it's entry by the trial court which petitioner alleges was an intentional and deliberate act by the plaintiff's counsel to prevent petitioner from taking action against it. The last sentence of this judgment states that a copy of it will be mailed to counsel of record on the date of entry or to the parties. Both federal and state rules require that the proof of service indicate the name and address of the parties, how mailed and the date mailed.

Approx. two (2) months later in a telephone conversation with the trial court clerk, that there was an entry in November 1985 which he was not aware of. This was in February 1986, as I recall, and at my request and at my expense, I requested a copy be sent to me. Petitioner did not have anyone representing him as previously stated, a fact

well-known to plaintiff's counsel as well as the current address of the petitioner.

Recitation of events preceding the time of petitioner's pro se pleadings in Nov. 1988, described hereafter, are necessary and highly important to the reader in exposing the predisposition and demeanor of the trial court since it's involvement in 1983.

On 2 Nov. 1988, petitioner filed a motion collaterally attacking the "transfer judgment" for lack of jurisdiction, requesting it be declared void.

Approx. ten (10) days later, petitioner received a copy of a judgment submitted for approval and signature with his motion, returned without being time and date stamped, with the word "REFUSED" written on it without any explanation. Appendix "22a"

A long distance telephone call to

the trial court revealed it was the work of the presiding judge in the case.

On 17 Nov. 1988, with cause, filed an Affidavit of Prejudice against the presiding judge to the Supreme Court of Ohio alleging discriminatory and prejudicial treatment of non-resident and pro se litigants, inter alia, including himself.

Not receiving a response from the Supreme Court of Ohio after approx. three (3) months, petitioner made another long-distance call to inquire of the status of the affidavit. At this time I was informed that the presiding judge had retired in January 1989 and another judge will be assigned the case. This was confirmed by Chief Justice Thomas J. Moyer, S.Ct.O, on 10 February 1989. Appendix "27a".

On 15 Feb. 1989, petitioner submitted a new motion to the recently-

appointed trial court judge collaterally attacking the "transfer judgment" for lack of jurisdiction. This also was not time and date stamped on the date received, the date of entry indicating 1 March 1989, fifteen (15) days after receipt by the trial court. Appendix "39a".

Due to the delays encountered, petitioner was forced to mail all pleadings by certified mail with a "return receipt" in an attempt to prompt the trial court to handle the pleadings the same way everyone else's was handled that walked through the door. After several telephone calls to the trial court regarding the delays encountered by time and date stamping pleadings long after they were received, petitioner was informed by the clerk that non-resident and pro se litigants had to be processed differ-

ently than those of residents. After making a few random checks with other courts in Ohio, petitioner failed to find any courts outside Montgomery County that invoke and impose the same "special handling" of non-resident and pro se pleadings.

On 27 March 1989, the trial court overruled the motion without inquiry into the jurisdictional defects alleged by the petitioner which were supported by law and facts. Appendix "40a".

Allegations of the petitioner regarding the practices of the trial court described herein against non-resident and pro se litigants and other problems encountered with the trial court are supported and exemplified by statements contained in a letter to the petitioner dtd. 6 April 1989 from the Bureau of Judicial Consultants, Franklin, Ohio. Appendix "51a".

Motion # 1 was a request for reconsideration of the 27 March 1989 decision, however by petitioner's inadvertence, it was titled "new trial". In the cover letter and body of the motion, petitioner does however refer to it as a reconsideration and specifically identifies the judgment. Appendix "41a".

Motion # 2 contains two (2) parts, Part "A" and Part "B";Part "A" is a bill of exceptions and Part "B" requests the trial court to take judicial notice of federal and state constitutional provisions and other Ohio statutes, laws and rules petitioner contends are applicable to support his arguments. Appendix "42a".

Motion # 3 requests petitioner's motion dtd. 1 Mar. 1989 be amended to include the civil contempt entry titled, "Decision and Judgment" dtd. 28 Oct.1985

(hereinafter referred to as the "contempt judgment") also alleged to be void for lack of both jurisdiction "in personam" and "in rem".

The underlying reason for the "contempt" and "transfer judgments" are purported to be the equitable distribution of marital interests incorporated in the final decree of divorce.

On 12 June 1989, the trial court again dismissed petitioner's motions by avoiding to respond to the alleged jurisdictional defects by addressing the title to Motion # 1 which petitioner inadvertently referred to as a "new trial". As mentioned briefly in the preceding page, the cover letter and the body of the motion refers specifically to reconsideration of the 27 March 1989 judgment, however, the trial court's response addressed the title and a previous judgment not mentioned

in the motion.

> ..."Pleadings should be interpreted according to their true meaning and effect in order to do substantial justice rather than interpreted according to their caption".

On 20 June 1989, petitioner filed another three-part motion pleading requesting (1) reconsideration of their 12 June decision (2) objections, and (3) request for response to the arguments presented and the process involved.

Received by the trial court on 23 June 1989, the motion document was not time and date stamped until two (2) weeks later on 7 July 1989. Appendix "43a".

On 7 Aug. 1989, the trial court entered a judgment dismissing the motions, again ignoring petitioner's cause of action and the process involved. Appendix "25a".

On 28 Aug.1989, petitioner filed

a notice of appeal citing the appeal on questions of law.

Once again the trial court did not time and date stamp it on the date received which was prior to 6 Sept. 1989, most likely a day or two before, finally entering it on the 14th of September, another unjustifiable delay of approx. ten(10) days. Appendix "44a".

On 31 October 1989, at the same time petitioner's brief was in the mail and on the way to the Court of Appeals, Second Appellate District (Ohio), the Court of Appeals entered a decision dismissing petitioner's appeal which was a direct result of the delays and the discriminatory and prejudicial treatment applied by the trial court against non-resident and pro se litigants and the manner the pleadings were processed. Appendix "3a".

The added effect of the appeal

being dismissed was more delay, and an unwarranted and unjustified expenditure of time, money, and effort placed on the petitioner to file a motion for reconsideration, which was re-instated. Appendix "4a".

Petitioner's appeal brief, case # CA 11821 was entered on 1 Nov 1989 in the Court of Appeals (Ohio).

Listed under the table of authorities, p. iii of the brief, are Constitutional provisions involved and the page numbers. Not indicated yet referred to in the brief are several places where petitioner's allegations are of discriminatory and prejudicial treatment. Appendix "45a".

On 13 June 1990, the Appeals Court (Ohio) entered a decision which appears to be a chronology of events and the arguments of the petitioner's brief. Nowhere is there any indication

or statement positively and specifically addressing the allegations of the lack of jurisdiction of the trial court and the entry of void judgments by a court lacking in power, authority, and any statutes, laws, court rules or procedures of Ohio. The decision precluding petitioner's appeal on the doctrine of "res judicata" failed to address the jurisdictional defects first since they did not establish the validity of the judgments in their response, and a void judgment, not the events leading to it, cannot be precluded by the doctrine of "res judicata". Shepard v. Pepper, 133 U.S. 626,646 (1889). . .

> "void judgments cannot be used as the basis for "res judicata"...

It is also of some interest to the petitioner the purpose or reason for underlining the words pro se twice in this entry which question is asked in

the petitioner's memorandum discussed later.

The Ohio Court of Appeals,Second Appellate District also labelled petitioner's appeal "frivolous" however, not one of the decisions rendered by the courts below addressed the allegations and the multitude of statutes, laws, rules, and precedence which were presented to them in petitioner's arguments.

On 20 August 1990, petitioner submitted a "Memorandum in Support of Jurisdiction" to the Supreme Court of Ohio, Columbus,Ohio, wherein petitioner dedicated Part "C" to support his opinion that a substantial Constitutional question existed. Part "C" of the memorandum was framed as indicated in appendix. Appendix "49a".

On 28 Nov. 1990, the Supreme Court of Ohio entered a decision

overruling petitioner's memorandum, however it did not affirm or deny the decision of the appeals court. Appendix "2a"

Supposedly mailed on the 28th, petitioner did not receive the entry until 7 Dec.1990, approx. nine (9) days later. On 5 Dec. 1990, after a telephone call to the Supreme Court of Ohio clerk's office, and learning that an entry had been made on 28 Nov.1990, petitioner asked for a copy, followed by a letter to that effect. When the first copy was received on 7 Dec. 1990 the envelope had been postmarked on three different dates which is discussed in the reasons. Appendix "53a".

Although plaintiff's counsel repeatedly refers to the award of thirty-five hundred ($3,500,00) dollars to the petitioner by the trial court,

it does not mean that petitioner "received" or was "paid" that amount. To this date, petitioner has not received one (1) penny for his contributions, efforts, and time expended in the acquisition of the Louisiana property, notwithstanding the providing of a home, food, and other necessities of life to the plaintiff during the marriage.

REASONS FOR GRANTING THE WRIT

I

Mere fact that alleged violations are claimed under the due process and equal protection clauses of the Fourteenth Amendment, even if doubtful or of questionable merit, by no means renders them unsubstantial for jurisdictional purposes.

In overruling petitioner's "Memorandum in Support of Jurisdiction", the Ohio Supreme Court here held that "no substantial constitutional question exists therein". Appendix "2a".

Petitioner, a non-resident of Ohio since 1968 and a pro se litigant, has repeatedly alleged in his pleadings, the denial of due process and equal protect-

ion under sec. 1, 14 U.S.C.A., and denial of rights and privileges guaranteed under sec. 2, ART.IV, U.S. Constitution.

In addition to the references in the case statement, there are other instances when petitioner has specifically alleged violations of his Constitutional rights to the courts below, including the Notice of Appeal to the Ohio Supreme Court.

What about the allegations of discriminatory and prejudicial treatment being specifically aimed at non-resident and pro se litigants by the courts below?

Most recently is the entry of the judgment of the Ohio Supreme Court on 28 Nov. 1990 which petitioner did not receive until 7 Dec. 1990, nine (9) days later, in an envelope bearing three (3) postmarks. Appendix "49a".

The most recent postmark was dated 3 Dec. 1990 indicating that this was the actual date of mailing. Inquiry to post office officials for an explanation of multiple postmarks revealed the reasons. When a letter is processed for mailing through a postage meter machine, not the post office, and mailed after the date indicated on the postmark, it is returned for correction and then postmarked again. The fact that this judgment was postmarked three (3) different times indicates that on two (2) of those occasions the court below attempted to mail the judgment to the petitioner after the date indicated by the postmark.

As a result of this allegedly intentional delay and the loss of nine (9) days in the process, petitioner was deprived the opportunity and the right to request a rehearing due to the

expiration of the ten-day time limit on the day the judgment arrived in Maine.

This also resulted in the loss of nine (9) days from the ninety-day time limit for filing this petition.

It is evident that the postage meter machines used to process subject judgment were located in the court below.

The invocation and imposition of unwritten, unpublished and inapplicable Ohio statutes, laws, court rules and procedures by the trial court aimed specifically and only at that class of litigants identified as non-residents and pro se, a class of individuals to which the petitioner belongs, has no apparent purpose other than attempting to suppress individual's rights by subjecting them to treatment and practices that can only be described as discriminatory and prejudicial as

distinguished from the treatment and normal practices in cases involving resident litigants.

Shortly after the return of petitioner's initial filing of the 2 Nov. 1988 motion described in the case statement, a telephone inquiry to the trial court clerk,whose name is known to the petitioner, informed the petitioner that all non-resident and pro se pleadings were required to be approved by a judge first before being accepted for entry and time and date stamped [1] , and that this process had been in effect for as long as he had been there. Every time a pleading is filed, even in the same cause, this

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[1] Ohio Revised Code Anno,O.R.C.§2303.08 provides in part,.."duties of the clerk of court"... "shall indorse on each pleading or paper in a cause filed in his office the time of filing"....

procedure would have to be followed when it involves non-resident and pro se litigants. When asked for the court rules establishing this "special treatment", petitioner was informed that it was a memo signed by the judge(s) of the trial court and posted on the bulletin board. He said he could not tell me of any specific rule of court that he knew of authorizing the procedures described to be enforced.

Numerous telephone calls to the trial court clerk attempting to have a copy of the memo sent to me ended in being told that it could not be located however, there has been no change in the rules or procedures which are still in effect to the present time. Appendix "52a".

Petitioner's allegations of the entry of decisions and judgments that are violative of the due process and

equal protection clauses of the U.S. Constitution, having been rendered by a court lacking jurisdiction of the subject matter and the person of the petitioner after the entry of a final decree of divorce, at which time the trial court no longer had continuing jurisdiction "in personam" after 23 July 1984, are discussed fully in the following reasons sections.

Whether the subject matter is tangible or intangible property, the "situa" of the property is determinative, and when the property is classified as immovable foreign real estate and a specific location identified to be outside the forum state, no further inquiry is warranted or justified.

In Hanson v. Denckla, 357 U.S. 245,246 (1957), although the property under discussion is classified to be intangible property, the affect is the

same but much simpler when the compelling factors require little determination, this Court stated;

> "Appellants charge that this judgment is offensive to the Due Process Clause of the Fourteenth Amendment because the Florida court was without jurisdiction. There is no suggestion that the court failed to employ a means of notice reasonably calculated to inform non-resident defendants of the pending proceedings [citing Walker v. City of Hutchinson, 353 U.S. 1121 (1956); Wallace v. Central Hanover B and T Co, 339 U.S. 306 (1949); McDonald v. Mabee, 243 U.S. 90,92 (1916)], or denied them an opportunity to be heard in defense of their interests. Roller v. Holly, 176 U.S. 398(1899). The alleged defect is the absence of "affiliating circumstances" without which the courts of a state may not enter a judgment imposing obligations on persons (jurisdiction "in personam") or affecting interests in property (jurisdiction "in rem" or "quasi in rem").

Interpretations of the meaning of due process are many and varied,however, in the history of similar cases and rulings by this Court on the question of jurisdiction and property outside the

forum state, it has consistently upheld the rule that a court entering a judgment must first have jurisdiction of both the person(s) and the subject matter and if not, the judgment is void and not entitled to comity or recognition under the "full faith and credit" clause, sec. 1, ART.IV, U.S. Const; Massie v. Watts, 6 Cranch 148 (1810); See, Fall v.Eastin, 215 U.S. 1,7 (1909); See, Sunderland, The Problem of Jurisdiction, Selected essays on Constitutional Law, 1270, 1272.

Due process must not be construed narrowly or treated summarily. It must always be associated with the idea of what is "just and fair". [2]

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[2] ... "Property rights are no less deserving of protection under Constitution and Federal Civil Rights Act than are human freedom".

In continuing the upholding of rules established by this Court, certiorari should be granted "in the interest of Justice".

II

The extent of a court's powers to punish for contempt is confined to the limits of their territorial boundaries established by statute, laws, and rules of the state, notwithstanding the inherent powers of the courts to impose fines and sentences as they see fit.

The prosecution of a civil contempt action against a non-resident defendant who was not served, did not appear, and over whom the trial court

lacked jurisdiction, initiated a month after the expiration of the Ohio limitations statute, Ohio Revised Code Anno, O.R.C. §2305.11 [3] , and the further lack of power of the trial court to render such judgment finding the person in contempt, is un-Constitutional and unsupported by Ohio laws.[4]

In Baker v. Baker, Eccles & Company, 243 U.S. 394 (1916) this Court held that a judgment rendered against a non-resident;

> ...."who had neither been served with process nor appeared in the suit was devoid of validity"...Baker v. Baker,supra at 403.

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[3] O.R.C. §2305.11, states in part... "or upon a statute for a penalty or forfeiture shall be brought within one year after the cause thereof accrued"..

[4] Rules Governing the Courts of Ohio, Civ.R. # 70 (1989), does not vest the Ohio courts with power and authority over persons or property outside the territorial limits of Ohio...

In asserting the position that it has consistently held pertaining to jurisdiction "in personam", this Court continues to require that the non-resident party to a suit be served with notice personally and constructive service is not sufficient to render a contempt judgment against a non-resident defendant. The statutes and laws of Ohio also uphold this rule even though the courts below have ignored precedence set in Ohio. In Armstrong v. Armstrong, 99 Ohio App. 7 (1954), 58 O.O. 79, the court's decision is clearly stated pertaining to contempt proceedings and jurisdiction. [5]

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[5] ..."As no court has jurisdiction to enjoin and punish for contempt in the absence of personal service upon the person enjoined, this decree (Florida) so far as it attempted to exercise such jurisdiction is null and void". 58 O.O. at 82. Appendix "54a".

In the case before you, the trial court lacked jurisdiction over the petitioner, the subject matter, and the power and authority to transfer title, deed, and ownership to property without the territorial limits of the forum state. Hanson v. Denckla, 357 U.S. 235 (1957). See, 12 A.L.R. 2D Anno, 1074, 1076, § 4, Contempt - Disobeying Invalid Decree; See also, 17 AMJUR 2D, § 42, Contempt.

The decisions and judgments of the courts below are in direct conflict with the rulings upheld by this Court and the doctrine established by legal principles of jurisdiction. Fall v. Eastin, 215 U.S. 1 (1909), supra at 11.

This Court must grant certiorari to uphold the rules and laws.

III

A divorce decree that attempts to act directly on title, deed and ownership to foreign real estate is void and not entitled to comity or recognition under the "full faith and credit" clause, sec. 1, ART.IV, U.S. Constitution.

Recognizing that a judgment identifying itself to be a judicial transfer of real estate and the identity and location of the real estate is contained in the judgment that specifies it's location in a state other than the forum state, this Court in it's wisdom can readily discern that the "contempt" and "transfer judgments" as well as the purported "fair and equal" distribution of marital interests incorporated in the divorce decree are

all void ab initio and not entitled to comity or recognition under sec. 1, ART. IV, U.S. Constitution. Rules of Case Law, 7 R.C.L. 1058, §96; Appendix "55a".

Subject matter in this case is described as immovable real estate consisting of approx. one hundred and five (105) acres of jointly-held land situated in Louisiana and the interests and profits including other assets derived directly from ownership of the property concealed from petitioner by the plaintiff and known to the trial court. Appendix "21a".

Under the rulings of this Court the doctrine of jurisdiction has repeatedly pointed to the need that the court have jurisdiction over the person and the subject matter essential to the entry of a valid judgment. There is absolutely no question that the trial

court lacked not only jurisdiction of the subject matter, the Louisiana property, it also attempted to usurp the sovereign powers of that State by decreeing the transfer of title without power and authority, over which it had no control. Watkins v.Holman, 16 Pet. 25, 57 (1842); Corbett v. Nutt, 10 Wall. 464, 475 (1870) speaking of a court of chancery;

> "Neither its decree or any conveyance under it, except by the party in whom title is vested, is of any efficacy beyond the jurisdiction of the court".

Following this doctrine, this Court recognizes that a court of one State cannot make it's own decree to operate as a conveyance of property situated in another State. Fall v. Eastin, 215 U.S. 1, (1909); Id at 12; 34 A.L.R. 3D, 962 et seq.

The definitions of fair and equal

distribution of marital property and a division of marital property is discussed at length in Bender, Uniform Marital Property Act,(1990) which also adds some authority to what marital assets consist of, their value at the time of dissolution of the marriage, and the need for good faith of the parties.

The predisposition of the trial court is evident by the record of proceedings on 2 July 1984, the day of the hearing and prima facie evidence of the court's acts to determine and establish title and ownership of foreign real estate by the entry of a decision fixing the year of the parties' alleged separation in 1968 as the year when petitioner's interests in the Louisiana property ended, sixteen (16) years prior to the actual divorce in 1984. Appendix "15a". "33a".

This power is not extended to the

states by any statute or supported by any rulings upheld by this Court, particularly stated in Hanson v. Denckla, 357 U.S. 235 (1957);

> "Since a state is forbidden to enter a judgment attempting to bind a person over whom it has no jurisdiction, it has even less right to enter a judgment purporting to extinguish the interest of such a person to property over which the court has no jurisdiction". Hanson v. Denckla at 250.

Any suggestion that may be forthcoming by the courts below that jurisdiction had been acquired over foreign real estate, situated without the domicile state of both parties, by virtue of the plaintiff's residency in the forum state is also not supported by this Court's rulings. See also, Fall v. Eastin, 215 U.S. 6 (1909); Hanson v. Denckla, supra at 249; Overby v. Gordon, 177 U.S. 214, 222, 223 (1899).

Regardless of the type of property

whether tangible or intangible, any decree attempting to act directly against the rights or disposition to property is a judgment "in rem". Hanson v.Denckla, supra at 250. See also, 34 A.L.R. 3D, 962 et seq., Jurisdiction - Divorce - Foreign Realty.

The title and deed to the Louisiana property had been entered as an exhibit by the plaintiff (# 11) leaving no doubt or question as to the identity and location of the property and the identification of the parties whose names appear on the deed, facts that are highly visible to the reader. Fall v. Eastin, 215, U.S. 1 (1909); Gratton v. Weber, 47 Fed. 852(1891,C.C.)

> ..."any attempt by one to give to its courts jurisdiction beyond its limits over persons domiciled or property situated in another state is a usurpation of authority, and all judicial proceedings in virtue thereof are held utterly void, and a statute, however

comprehensive, should not be construed as conferring such jurisdiction". 7 R.C.L. 1058 (1915); Fall v. Eastin, supra at 7; Gratton v. Weber, supra at 853,854.

The key word found to be determinative of the limits of a court's jurisdictional limits when the subject matter under consideration is property, is the word "within". If the subject matter is not "within" the territorial limits of the forum state and not under it's control, jurisdiction cannot be acquired by the court and unless the act was committed "within" the forum state by a non-resident, constructive service is not enough to bring a person into the court's jurisdiction. Roller v. Holly, 176 U.S. 398(1899); Pana v. Broler, 107 U.S. 529 (1883), Id,at 545.

The idea that a person or property can be beckoned at will and decrees rendered that transcend the jurisdic-

tional limits established by laws, thus giving the states the same powers of the federal government, is the proposition extended by the courts below to justify their decisions. Hart v. Sansom, 110 U.S. 151 (1883), Id at 155.

The decisions and judgments of the trial court pertaining to a purported equitable distribution of marital property and the reasons and calculations on which the distribution was based, are void ab initio for lack of jurisdiction by the court entering them. In direct conflict with the doctrines and rulings upheld by this Court that have been perpetuated with consistency in like disputes involving similar subjects, the courts below have gone to extra-ordinary effort to justify and uphold the decisions and judgments of the trial court that are unjustified and unsupp-orted by the duly given statutes, laws,

court rules and procedures of Ohio and the rules of basic law, by avoiding the issues by dismissals.

Repeating a previous statement, jurisdiction is essential to the validity of decisions and judgments. It is the judicial duty of a judge to inquire into allegations of jurisdictional defects by addressing the arguments presented regardless of the manner in which they are presented.

This Court has also recognized the great public interest in cases involving marital property distribution and decisions that are "just and fair" and not ruled with a "heavy hand". This Court should grant certiorari here to do Justice.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. Petitioner does not include Question 6 as a reason for granting certiorari but as an opportunity to reinforce the rule that void judgments are not entitled to recognition in sister states either by comity or under the "full faith and credit" clause, Section 1, ART.IV, U.S. Constitution.

Respectfully Submitted,

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